Felony Arraignments in District Court

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Part A—Commentary on Felony Arraignments

Part B—Checklists

Part A—Commentary on Felony Arraignments

4.1 Applicable Court Rules

MCR 6.610(G) governs the conduct of arraignments in district court for offenses to be tried in circuit court. The rule's discussion is limited to the district court's conduct of arraignments for offenses over which the district court does *not* have trial jurisdiction—i.e., felony offenses and misdemeanor offenses punishable by imprisonment for more than one year. Although not included in the listed rules governing criminal procedure in district court, several provisions of MCR 6.104 also address the procedure for conducting arraignments in felony cases. MCR 6.001(A) and (B). Therefore, when a person charged with a felony offense over which the district court does not have trial jurisdiction but whose first appearance on the charged offense is before the district court, both MCR 6.104 and MCR 6.610(G) govern the conduct of that proceeding.

Additionally, although the district court does not have trial jurisdiction over felony offenses, the district court has jurisdiction over *all* preliminary examinations, except that no preliminary examination is held for misdemeanor offenses over which the district court has trial jurisdiction. MCL 600.8311(d). If, after the preliminary examination, the district court finds probable cause to bind an individual over for trial on a felony or misdemeanor not cognizable by the district court, the individual will be arraigned on the offense in the court having trial jurisdiction over the offense—the circuit court. MCR 6.113(A). This monograph deals with an individual's initial arraignment in *district* court for an offense over which the *circuit* court—not the district court—has trial jurisdiction. Unless otherwise noted, any reference to "arraignment" is to the initial arraignment conducted in district court for felony or misdemeanor offenses over which the circuit court has trial jurisdiction.

4.2 Jurisdiction and Venue

A. Jurisdiction

A district court has the same power to hear and determine matters within its jurisdiction as does a circuit court over matters within the circuit court's jurisdiction. MCL 600.8317. A district court has jurisdiction over felony and misdemeanor arraignments, as well as the authority to conduct preliminary examinations in all criminal cases over which the circuit court has trial jurisdiction. MCL 600.8311(c)–(d). A circuit court's trial jurisdiction includes "serious" or "high court" misdemeanors for which two years of imprisonment may be imposed.

The Michigan Code of Criminal Procedure, MCL 760.1 *et seq*., defines "felony" as a violation of Michigan's penal law for which a person, if convicted of the offense, may be punished by death or by imprisonment for more than one year or an offense specified by law to be a felony. MCL 761.1(g). See also MCL 750.7 (Penal Code's definition of felony). The Michigan Penal Code defines "misdemeanor" as an act or omission that is not a felony, that is punishable by law or discretion of the court with a fine, penalty or forfeiture, or less than one year of imprisonment. MCL 750.8. Consequently, any "misdemeanor" punishable by more than one year of imprisonment is a "felony" for purposes of determining trial jurisdiction.

Criminal conduct near county boundary lines. When an offense is committed within one mile of the boundary line between two counties, jurisdiction is proper in either county. MCL 762.3(1) provides:

> "(1) Any offense committed on the boundary line of 2 counties, or within 1 mile of the dividing line between them, may be alleged in the indictment to have been committed, and may be prosecuted and punished in either county."

B. Venue*

*See Section 4.7 for detailed discussion of determining the proper location for an arraignment.

For a **first class district**, venue for criminal actions is in the **county** where the violation occurred. MCL 600.8312(1). A first class district is made up of one or more counties, and each county is responsible for maintaining, financing, and operating the district court within that county. MCL 600.8103(1).

For a **second class district,** venue for criminal actions is in the **district** where the violation occurred. MCL 600.8312(2). A second class district is made up of a group of political subdivisions within a county, and the county is responsible for maintaining, financing, and operating the district court within the county. MCL 600.8103(2).

For a **third class district**, venue for criminal actions is in the **political subdivision** where the violation occurred, except that when the violation occurred in a political subdivision where the court is not required to sit, venue is proper in any political subdivision where the court is required to sit. MCL 600.8312(3). A third class district is made up of one or more political subdivisions within a county, and each political subdivision is responsible for maintaining, financing, and operating the district court within that political subdivision. MCL 600.8103(3).

Criminal conduct near county boundary lines. "If an offense is committed on the boundary of 2 or more counties, districts or political subdivisions or within 1 mile thereof, venue is proper in any of the counties, districts or political subdivisions concerned." MCL 762.3(3)(a).

4.3 A District Court Magistrate's Authority

Subject to the chief district judge's approval, district court magistrates generally have the authority to issue arrest warrants, conduct arraignments, fix bail and accept bond, accept pleas for specified offenses, and impose sentences for specified offenses. MCL 600.8511(a)–(e).

> **Note:** The terms "magistrate" and "district court magistrate" are not always synonymous. According to the Code of Criminal Procedure, a "magistrate" is a district court judge or a municipal court judge, but a "magistrate" is not a "district court magistrate." MCL 761.1(f). The term "district court magistrate" is specifically used in the Code of Criminal Procedure when the subject matter involves a district court magistrate. But the Code of Criminal Procedure also states that a "district court magistrate" may exercise the powers, jurisdiction, and duties of a "magistrate" if expressly authorized by the Revised Judicature Act, MCL 600.101 *et seq*. That is, if authorized by law, a "district court magistrate" may exercise the powers and duties of a municipal court or a district court judge. MCL 761.1(f).
>
> Note also that MCR 6.003(4) recognizes the distinction between a "magistrate" and a "district court magistrate." MCR 6.003(4) defines "court" or "judicial officer" as "a judge, a magistrate, or a district court magistrate authorized in accordance with the law to perform the functions of a magistrate." A district court magistrate's authority is also subject to conditions found in MCR 4.401(A)–(B), which provide:
>
> > "(A) Procedure. Proceedings involving magistrates must be in accordance with relevant statutes and rules.
> >
> > "(B) Duties. Notwithstanding statutory provisions to the contrary, magistrates exercise only those duties expressly authorized by the chief judge of the district or division."

Arrest warrants. A district court magistrate may issue arrest warrants for felonies, misdemeanors, and ordinance violations pursuant only to the written authorization of the prosecuting attorney or municipal attorney. MCL 764.1(1)–(2) and MCL 600.8511(d).*

*See Criminal Procedure Monograph 1: *Issuance of Complaints & Arrest Warrants–Revised Edition* (MJI, 2003), for a more complete discussion of issuing arrest warrants.

Arraignments and pleas. MCL 600.8513(1) states that

> "[w]hen authorized by the chief judge of the district and whenever a district judge is not immediately available, a district court magistrate may conduct the first appearance of a defendant before the court in all criminal and ordinance violation cases, . . . but this section shall not authorize any district court magistrate to accept a

> plea of guilty or nolo contendere not expressly authorized pursuant to section 8511 or 8512a."

A district court magistrate's authority* to accept guilty or no contest pleas is limited to the specific violations listed in MCL 600.8511(a)–(c). The district court magistrate's authority to accept pleas and impose sentences is subject to the chief judge's approval and involves violations punishable by not more than 93 days. *Id*.

*See *Criminal Procedure Monograph 3: Misdemeanor Arraignments & Pleas—Revised Edition* (MJI, 2004), for detailed information concerning a district court magistrate's authority.

Fixing bail and accepting bond. Without any apparent qualification, a district court magistrate has a duty "[t]o fix bail and accept bond in all cases." MCL 600.8511(e). See SCAO Form MC 241 (Bond).

Appointing counsel. If authorized by the chief judge of the district, a district court magistrate may appoint counsel to an indigent defendant charged with a misdemeanor offense or ordinance violation punishable by not more than one year of imprisonment. MCL 600.8513(2)(a).

Appealing a district court magistrate's ruling. A party may appeal as of right any decision of the district court magistrate to the district court in which the magistrate serves. The appeal must be in writing, must be made within seven days of the entry of the decision being appealed, and should substantially comply with the form outlined in MCR 7.101(C). Except as otherwise provided by statute or court rule, no fee is required to file an appeal of a district court magistrate's ruling. The district court hears the matter *de novo*. MCR 4.401(D).

District court judge's control of magisterial action. MCR 4.401(C) states that "[a]n action taken by a magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves."

> **Note:** MCR 4.401(C) does not expressly distinguish between "magistrate" and "district court magistrate."

4.4 Record Requirements

Except as provided by law or supreme court rule, all proceedings in district court shall be recorded by the district court recorder by the use of approved recording devices or taken by the district court reporter. MCL 600.8611; MCL 600.8331. MCR 6.104(F) expressly mandates that "[a] verbatim record must be made of [a felony] arraignment."

4.5 Right to an Arraignment

Michigan law mandates that an arrestee be arraigned before a magistrate "without unnecessary delay." MCL 764.13; MCL 764.26; *People v Cipriano*, 431 Mich 315, 319 (1988).

Express statutory authority for felony arraignments is contained in MCL 764.26:

> "Every person charged with a felony shall, without unnecessary delay after his arrest, be taken before a magistrate or other judicial officer and, after being informed as to his rights, shall be given an opportunity publicly to make any statement and answer any questions regarding the charge that he may desire to answer."

General statutory authority for arraignments following a *warrantless* arrest for an offense of unspecified severity is contained in MCL 764.13:

> "A peace officer who has arrested a person for an offense without a warrant shall without unnecessary delay take the person arrested before a magistrate of the judicial district in which the offense is charged to have been committed, and shall present to the magistrate a complaint stating the charge against the person arrested."

A defendant's knowledge of the nature and cause of the accusations made against him or her is a fundamental due process right. *People v Thomason*, 173 Mich App 812, 814–815 (1988). A conviction obtained for an offense on which the defendant was not arraigned and where the record does not show that the defendant waived his or her right to an arraignment must be reversed. *Id*. at 815.

4.6 Time Requirements for Arraignments

A. "Without Unnecessary Delay"

Court rules and statutory guidelines require that felony arraignments be held "without unnecessary delay." MCR 6.104(A); MCL 764.1b; MCL 764.13; MCL 764.26.

The purpose of a prompt arraignment is

> "to advise the arrestee of his constitutional rights and the nature of the charges against him by an impartial judicial magistrate, to insure that the arrestee's rights are not violated, and to afford the arrestee an opportunity to make a statement or explain his conduct in open court if he so desires. [P]rompt arraignment is of particular

> importance when . . . a person is arrested without a warrant. In such situations, arraignment provides a *judicial* determination of probable cause which would not otherwise occur until the preliminary examination. [P]rompt arraignment affords the arrestee an opportunity to have his right to liberty on bail determined [footnotes omitted]." *People v Mallory*, 421 Mich 229, 239 (1984) (emphasis in original).

In each county, the court with trial jurisdiction over felony cases must submit a plan for making a judicial officer available to conduct felony arraignments on each day of the year, or the plan must make a judicial officer available every day of the year to set bail for felony offenses. MCR 6.104(G)(1)–(2).

Where a court adopts the latter plan of availability and makes an officer available to set bail each day of the year, the court's plan must provide for the prompt transport of any defendant who is unable to post bond to the judicial district where the offense occurred. MCR 6.104(G)(2). "Prompt transportation" requires that the defendant be arraigned "not later than the next regular business day." *Id*.

B. Consequences of a Lengthy Delay

Failure to comply with the time requirements prescribed for a criminal defendant's arraignment may jeopardize the nature or amount of evidence admissible in subsequent court proceedings against the defendant. Pre-arraignment delay is only one factor to be considered when determining whether a defendant's confession was voluntary or whether physical evidence was obtained lawfully. *People v Cipriano*, 431 Mich 315, 319 (1988). Evidence must be excluded when it was obtained during an unlawful detention designed to allow law enforcement personnel additional time to gather evidence. *People v Mallory*, 421 Mich 229, 240 (1984). The exclusionary rule similarly bars the admission of any evidence that would not have been obtained but for the procurement of evidence first obtained by unlawful detention. *Id*. at 241.

The requirement that an accused be arraigned "without unnecessary delay" is more clearly quantified by case law involving defendants' challenges to the length of their post-arrest/pre-arraignment detention. In all "but the most extraordinary situations," an individual arrested without a warrant may not be detained for more than 48 hours without a judicial determination of probable cause. *People v Whitehead*, 238 Mich App 1, 4 (1999). Where there is no bona fide emergency to justify a lengthy detention and circumstances indicate that the detention was prolonged in an effort to obtain more evidence to support the accused's guilt, a person's constitutional right to be free of unreasonable seizure is implicated. *Id.* at 13. The test to determine whether a confession is voluntary is not limited to whether the delay was reasonable; a court must determine whether the delay was used for the purpose of coercing a confession from the arrestee. *People v Bohm*, 49 Mich App 244, 252 (1973).

*See Criminal Procedure Monograph 6: *Pretrial Motions—Revised Edition* (MJI, 2001), Sections 6.16–6.17.

A delay of more than 48 hours between a defendant's warrantless arrest and the probable cause hearing is presumptively unreasonable and shifts the burden to the government to show the delay was caused by extraordinary circumstances. *Riverside Co v McLaughlin*, 500 US 44, 56–57 (1991). Based on *Riverside*, the Court of Appeals found that a delay in excess of 80 hours was a presumptive violation of the defendant's Fourth Amendment protection against unreasonable seizure. *People v Manning*, 243 Mich App 615, 631 (2000). However, in the absence of police misconduct, such a lengthy delay did not automatically make involuntary any statements the defendant made during the extended detention. *Id.* at 644–645. Notwithstanding the unreasonableness of the seizure, the *Manning* Court concluded that the ultimate admissibility of a defendant's statement required a traditional inquiry into the statement's voluntariness. *Id.* at 645.* The *Manning* Court emphasized that even short delays could be unconstitutional if the delay was unreasonable under the circumstances presented. *Id.* at 630, citing *Riverside*, *supra*, 500 US at 56–57.

4.7 Location of Arraignment

A. Arraignment on Arrests Made by Warrant

When a peace officer makes an arrest by warrant, the warrant

> "shall command the peace officer immediately to arrest the person accused and to take that person, without unnecessary delay, before a magistrate of the judicial district in which the offense is charged to have been committed . . . ." MCL 764.1b.

A defendant arrested by warrant must be arraigned before a court specified in the warrant. MCR 6.104(B). If the defendant was arrested by warrant outside the county in which the offense occurred, then "the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of this rule." *Id*. If "prompt transportation" cannot be had, the arrestee must be taken "without unnecessary delay" before the nearest available court for a preliminary appearance pursuant to MCR 6.104(C). MCR 6.104(B). MCR 6.104(B) requires the same "prompt transport" to the proper judicial district when an individual is arrested without a warrant and the arrest occurs in a county outside of the one in which the offense allegedly occurred.

> **Note:** Because most warrantless arrests result from the accused's conduct as witnessed by a law enforcement officer or citizen, warrantless arrests most often are made in the same county where the offense occurred. Exceptions to this may arise when an individual cannot be immediately apprehended but is later located and arrested in a county different from the county in which the individual's conduct was observed.

If an individual is arrested on a warrant for a bailable offense in a different county than the county in which the offense occurred, and the arrestee asks to be taken before a magistrate of the judicial district in which he or she was arrested, the individual must be taken before a magistrate of that district. MCL 764.4. In those circumstances:

- The magistrate before whom the accused appears may take from the person a recognizance with sufficient sureties for the accused's appearance within 10 days before a magistrate in the same district where the charged offense occurred. MCL 764.5.
- The magistrate must certify on the recognizance that the accused was permitted to post bail and deliver the recognizance to the arresting officer. Without unnecessary delay, the arresting officer must see that the recognizance is delivered to a magistrate or clerk of the court where the accused will be appearing. MCL 764.6.
- If the magistrate refuses to permit the arrestee to post bail or if insufficient bail is offered, the official having charge of the arrestee must take him or her before a magistrate in the judicial district where the charged offense was committed. MCL 764.7.

B. Arraignment on Arrests Made Without a Warrant

An accused arrested without a warrant must be arraigned without unnecessary delay before a court in the judicial district where the offense allegedly occurred. MCR 6.104(B). A peace officer who arrests an individual without a warrant must, without unnecessary delay, take the arrestee before a magistrate in the district where the offense occurred and present the magistrate with a complaint* stating the offense for which the individual was arrested. MCL 764.13. The complaint must be filed at or before the accused's arraignment. MCR 6.104(D).

*The complaint must comply with the requirements of MCR 6.101, discussed below. See *Criminal Procedure Monograph 1: Issuance of Complaints & Arrest Warrants—Revised Edition* (MJI, 2003), for more information about the complaint process.

A complaint's primary function is to cause the magistrate to determine whether to issue a warrant for the accused's arrest. *People v Higuera*, 244 Mich App 429, 443 (2001). A complaint must contain "the substance of the accusation" against the person named in the complaint and may include factual allegations supporting reasonable cause. MCL 764.1d. A warrant issued pursuant to MCL 764.1a must contain "the substance of the accusation" as it is recited in the complaint. MCL 764.1b.

MCR 6.101 contains the requirements of a criminal complaint:

> "A complaint is a written accusation that a named or described person has committed a specified criminal offense. The complaint must include the substance of the accusation against the accused and the name and statutory citation of the offense." MCR 6.101(A).

When an individual has been arrested without a warrant, the law requires also that a prompt determination of probable cause be made. *People v Mallory*, 421 Mich 229, 239 n 4 (1984). Where an individual is in custody after a warrantless arrest, a magistrate must determine if there exists reasonable cause to believe the individual in custody committed the offense. MCL 764.1c(1). If the court finds reasonable cause, it must either:

- issue a warrant for the accused's arrest according to MCL 764.1b, or
- endorse the complaint according to MCL 764.1c.

If the court endorses the complaint on a finding of reasonable cause, the complaint constitutes a warrant as well as a complaint. MCL 764.1c(2). A magistrate "endorses" the complaint by noting the finding of reasonable cause that a crime was committed and that the individual named in the complaint committed it, and directing that the individual accused of the crime be taken before the court in the district in which the crime allegedly occurred. MCL 764.1c(1)(b).

4.8 Procedure Required for Felony Arraignments in District Court

A. Advising the Defendant*

*See Section 4.9, below, for detailed discussion of a defendant's rights.

MCR 6.610(G) and MCR 6.104(E) specify the procedure to be employed by a district court when conducting arraignments for offenses over which the circuit court has trial jurisdiction.

When a defendant is arraigned on a felony charge or a misdemeanor charge punishable by more than one year of imprisonment, the court must:

- read the warrant or complaint into the record, MCR 6.610(G)(1);
- "inform the accused of the nature of the offense charged, and its maximum possible prison sentence and any mandatory minimum sentence required by law," MCR 6.104(E)(1);
- if the defendant is not represented by counsel at his or her arraignment, inform the defendant of the right to be represented by an attorney, MCR 6.610(G)(2)(b);
- if the accused is not represented by a lawyer at the arraignment, advise the accused that he or she has a right to remain silent, that anything said orally or in writing can be used against him or her in court, that the accused is entitled to have an attorney present during any questioning consented to, and that the court will appoint an attorney to represent the accused if he or she cannot afford to hire one, MCR 6.104(E)(2)(a)–(d);

- if the defendant is indigent, inform him or her of the right to have an attorney appointed at public expense, MCR 6.610(G)(2)(c);
- advise the accused of his or her right to be represented by an attorney at all subsequent proceedings, and if appropriate, the court must appoint a lawyer, MCR 6.104(E)(3);
- inform the defendant of the right to a preliminary examination, MCR 6.610(G)(2)(a);
- schedule the accused's preliminary examination for a date within 14 days of the arraignment and inform the accused of the date, MCR 6.104(E)(4);
- inform the defendant of the right to be released on bond, MCR 6.610(G)(2)(d); and
- determine whether pretrial release is appropriate and if so, what form of pretrial release is proper, MCR 6.104(E)(5).

The court must also "ensure that the accused has been fingerprinted* as required by law." MCR 6.104(E)(6).

*See subsection (C), below.

A district court conducting an accused's arraignment on a circuit court offense is prohibited from "question[ing] the accused about the alleged offense or request[ing] that the accused enter a plea." MCR 6.104(E).

B. Pretrial Release

When a defendant is arraigned before a court in the same county where the offense allegedly occurred, or before the court specified in the complaint or warrant if the defendant was arrested by warrant, the district court must determine whether pretrial release is appropriate and if so, the court must tailor any conditions of the defendant's pretrial release to the circumstances of the offense and the offender.* MCR 6.104(E)(5).

*See Sections 4.14–4.16, below, for detailed discussion of pretrial releases.

In general, where the defendant is preliminarily arraigned before a court in a county other than the county in which the offense occurred, the court must obtain a recognizance from the accused indicating that he or she will appear within the next 14 days before a court specified in the warrant or, in the case of a warrantless arrest, before a court in the judicial district where the offense occurred, or before another designated court. MCR 6.104(C). After receiving the accused's recognizance, the court must certify the recognizance and deliver it to the appropriate court "without delay." *Id*. If the accused was not released, he or she must be promptly transported to the judicial district of the offense. *Id*.

C. Fingerprinting

At a defendant's arraignment for a felony or misdemeanor punishable by more than 92 days' imprisonment, both a court rule and a statute require the district court to make sure that the accused's fingerprints have been taken as required by law. MCR 6.104(E)(6) and MCL 764.29.

MCL 764.29 describes the process by which the court should "ensure that the accused has been fingerprinted":

> "(1) At the time of arraignment of a person on a complaint for a felony or a misdemeanor punishable by imprisonment for more than 92 days, the magistrate shall examine the court file to determine if the person has had fingerprints taken as required by [MCL 28.243].
>
> "(2) If the person has not had his or her fingerprints taken prior to the time of arraignment for the felony or the misdemeanor punishable by imprisonment for more than 92 days, upon completion of the arraignment, the magistrate shall do either of the following:
>
> > "(a) Order the person to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the person so that the person's fingerprints can be taken.
> >
> > "(b) Order the person committed to the custody of the sheriff for the taking of the person's fingerprints."

4.9 Required Advice of Rights at Felony Arraignments

A. Right to Counsel

In general. When an unrepresented defendant is arraigned in district court for an offense over which the district court does not have trial jurisdiction, the court must inform the defendant of his or her right to the assistance of counsel and to appointed counsel if he or she is indigent. MCR 6.610(G)(2)(b)–(c).

At arraignment on the warrant or complaint. Two different court rules address the court's responsibility, at a defendant's arraignment on the warrant or complaint, to advise a defendant of his or her right to counsel. MCR 6.005(A) and MCR 6.104(E).

MCR 6.005(A)(1) requires the court, at a defendant's arraignment on the warrant or complaint, to advise the defendant of his or her right to the assistance of counsel at all subsequent court proceedings. In addition, at a defendant's arraignment on the warrant or complaint, the court must inform the defendant of the right to appointed counsel at public expense if he or she wants an attorney and cannot afford to retain one. MCR 6.005(A)(2). Whether a defendant wishes an attorney's assistance and whether he or she is financially unable to retain an attorney are matters the court must determine by questioning the defendant.*

*See Sections 4.10 and 4.12(B) for more information.

When the defendant is not represented by counsel at arraignment. MCR 6.104(E)(2) requires a court to convey specific information to a defendant at arraignment "*if the accused is not represented by a lawyer at the arraignment*." (Emphasis added.) Where a defendant is not represented by counsel at arraignment, the court must advise the defendant that he or she is entitled to have an attorney present during any questioning to which the defendant has consented and that the court will appoint an attorney to represent the defendant if he or she is indigent.* MCR 6.104(E)(2)(c)–(d). MCR 6.104(E)(3) further requires the court to advise a defendant at arraignment (whether or not represented by an attorney at the time) that he or she has the right to be represented by an attorney at all subsequent proceedings, and if appropriate, the court must appoint counsel for the defendant.

*See Section 4.10 for information on appointed counsel.

B. Advice of Rights at Preliminary Appearance Outside the County of Offense

Whenever an accused is arrested outside the county in which the alleged offense occurred *and* prompt transportation to that county cannot be arranged, the accused must be taken to the nearest available court for a preliminary appearance. MCR 6.104(B). If, at the preliminary appearance, the accused is not represented by counsel, the court's sole duty is to advise the defendant of his or her *Miranda** rights in accordance with MCR 6.104(E)(2) and to determine whether pretrial release is appropriate. MCR 6.104(C). Specifically, when an accused appears before a court outside the county in which the alleged offense occurred, the court is responsible for advising the accused that

**Miranda v Arizona*, 384 US 436, 444 (1966).

> "(a) the accused has a right to remain silent,
>
> "(b) anything the accused says orally or in writing can be used against the accused in court,
>
> "(c) the accused has a right to have a lawyer present during any questioning consented to, and
>
> "(d) if the accused does not have the money to hire a lawyer, the court will appoint a lawyer for the accused[.]" MCR 6.104(E)(2).

4.10 Appointed Counsel

Each trial court (circuit, district, probate, and municipal) must adopt an administrative order describing the court's procedures for selecting, appointing, and compensating attorneys who represent indigent parties before that court. MCR 8.123(A)–(B). Each trial court's order must be submitted to the State Court Administrator pursuant to MCR 8.112(B)(3). The court's plan "shall [be] approve[d] if its provisions will protect the integrity of the judiciary." MCR 8.123(C).

Although a district court magistrate may appoint counsel for a defendant charged with a misdemeanor, the magistrate is not authorized to appoint counsel in felony cases. MCL 600.8513(2)(a).

When a defendant requests the assistance of an attorney and claims he or she is financially unable to retain one, a determination of the defendant's indigence must be made. MCR 6.005(B). See SCAO Form MC 222 (Petition/ Order for Court Appointed Attorney). The court making this determination should consider the following factors:

- the defendant's present employment status, earning capacity, and living expenses;
- the defendant's outstanding debts and liabilities, secured and unsecured;
- whether the defendant qualifies for and receives public assistance;
- whether the defendant has available real or personal property that could be converted to cash without causing undue financial hardship to the defendant or the defendant's dependents; and
- any other circumstances that impair the defendant's ability to pay the fee ordinarily required to retain competent counsel. MCR 6.005(B)(1)–(5).

A defendant's indigence must be determined based only on the *defendant's* financial resources, not the financial resources of the defendant's friends and family. *People v Arquette*, 202 Mich App 227, 230 (1993). In *Arquette*, the trial court erred in denying the defendant's counsel a transcript at public expense because the defendant's parents had retained the attorney. The Court of Appeals held that the defendant was indigent and remained so despite the parents' retention of the defendant's counsel. *Id*.

Similarly, a defendant's ability to post bond to gain pretrial release does not make the defendant ineligible for appointed counsel. MCR 6.005(B).

If the defendant is determined to be indigent. If the court finds the defendant indigent, an attorney must be promptly appointed and notified of his or her appointment. MCR 6.005(D). A defendant may be only partially

indigent. If a defendant is determined to be only partially indigent, the court may require the defendant to contribute to the costs of his or her defense. The court may establish a repayment plan and order the defendant's compliance with the plan. MCR 6.005(C). See SCAO Form DC 213 (Advice of Rights), which specifically states: "You may have to repay the expense of a court appointed attorney."

Where a defendant did not claim an inability to pay an attorney, the defendant was presumed able to reimburse the county for the costs of his appointed counsel. *People v Nowicki*, 213 Mich App 383, 386 n 1 (1995). Reimbursement is proper where repayment is not a condition of a defendant's representation or sentence. *Id.* at 388.

Responsibilities of appointed counsel. An attorney appointed to represent an indigent defendant is responsible for:

- representing the defendant at all court proceedings including sentencing and proceedings leading to possible revocation of a defendant's youthful trainee status;
- filing interlocutory appeals as the attorney deems appropriate;
- responding to any preconviction appeals by the prosecution; and
- except where an appellate lawyer has been appointed, filing post-conviction motions deemed appropriate by the attorney, including motions for a new trial, a directed verdict, plea withdrawal, or resentencing. MCR 6.005(H)(1)–(4).

4.11 Multiple Defendants and the Right to Counsel

Appointed counsel. "When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the court must appoint separate lawyers unassociated in the practice of law for each defendant." MCR 6.005(F).

Retained counsel. When two or more defendants involved in a case have retained the same counsel or counsel associated in practice, the court must determine whether any potential conflicts of interest might jeopardize the right of each defendant to the uncompromised loyalty of that defendant's attorney. MCR 6.005(F).

A court may not allow the same attorney (or two or more attorneys associated in practice) to jointly represent two or more defendants unless:

> "(1) the lawyer or lawyers state on the record the reasons for believing that joint representation in all probability will not cause a conflict of interests;

> "(2) the defendants state on the record after the court's inquiry and the lawyer's statement, that they desire to proceed with the same lawyer; and
>
> "(3) the court finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding." MCR 6.005(F)(1)–(3).

Although MCR 6.005(F) requires the court to appoint different attorneys to represent multiple indigent defendants charged in the same offense, there is no requirement that multiple defendants be represented by different counsel when the attorneys are retained. This distinction between appointed and retained counsel does not violate a defendant's right to equal protection. *People v Portillo*, 241 Mich App 540, 542 (2000). In *Portillo*, the trial court complied with the requirements of MCR 6.005(F) before permitting the same retained attorney to represent both defendants. *Portillo*, *supra* at 543–544. In addition to the court's inquiry into potential conflicts of interest, the *Portillo* defendant voluntarily agreed to the joint representation. *Portillo*, *supra* at 544.

Unanticipated conflicts of interest. "If, in a case of joint representation, a conflict of interest arises at any time, including trial, the lawyer must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate lawyers." MCR 6.005(G). On its own initiative the court should inquire into any apparent potential conflicts of interest as they arise and take whatever action the interest of justice requires. *Id*.

Note: A proposed amendment to MCR 6.005 would prohibit the same attorney or attorneys associated in the practice of law from representing multiple indigent defendants charged jointly or whose cases are otherwise joined without regard to the defendants' indigence. As proposed, MCR 6.005(F)* would replace former MCR 6.005(F) and (G) and provide:

> "(F) Multiple Representation. When two or more defendants are jointly charged with an offense or offenses or their cases are otherwise joined, they may not be represented by the same lawyer or by lawyers associated in the practice of law."

*Admin. Order 2003-04, 469 Mich 1256, 1262–1263 (2004).

4.12 Waiver of Rights

A. Right to Arraignment

Determining whether a defendant waived his or her right to an arraignment requires an examination of all the circumstances. For a defendant's waiver to be valid, the record must establish that the defendant was entitled to an arraignment, that the defendant knew he or she was entitled to an arraignment,

and that the defendant voluntarily elected not to exercise that entitlement. *People v Thomason*, 173 Mich App 812, 815–816 (1988).

A defendant does not have the burden of coming forward to request an arraignment even when the defendant is aware that he or she was entitled to an arraignment and the arraignment did not occur. *Thomason*, *supra* at 816.

B. Right to Counsel

A court cannot accept a defendant's waiver of the right to be represented by an attorney unless the court first

1) advises the defendant of the charge against him or her, the maximum possible prison sentence the defendant could face if convicted of the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and

2) offers the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed attorney. MCR 6.005(D)(1)–(2).

See *People v Hicks*, 259 Mich App 518, 523–531 (2003), for a comprehensive discussion of proper compliance with the requirements of MCR 6.005.

Record of continuing waiver. MCR 6.005(E) requires that a record be made at each proceeding of a defendant's waiver of the assistance of counsel.

> "If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings:
>
> > "(1) the defendant must reaffirm that a lawyer's assistance is not wanted; or
> >
> > "(2) if the defendant requests a lawyer and is financially unable to retain one, the court must appoint one; or
> >
> > "(3) if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one." MCR 6.005(E)(1)–(3).

4.13 Scheduling the Preliminary Examination

Adult defendants charged with a felony offense or a misdemeanor offense punishable by more than one year of imprisonment are statutorily entitled to a prompt, fair, and impartial examination. MCL 766.1.

*See Section 5.6 of Criminal Procedure Monograph 5: *Preliminary Examinations—Revised Edition* (MJI, 2003), for detailed discussion of an adult defendant's right to a preliminary examination.

The magistrate before whom a felony defendant is arraigned must schedule the defendant's preliminary examination* to commence no more than 14 days after the arraignment. MCL 766.4; MCR 6.104(E)(4). MCR 1.108(1) governs the method of computing the 14-day time period:

> "The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or holiday on which the court is closed pursuant to a court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday on which the court is closed pursuant to court order."

A preliminary examination may not be adjourned unless the court makes a finding on the record of good cause for adjournment. MCR 6.110(B)(1).

*Even where a defendant properly raises the issue before his or her preliminary examination, appellate review of the issue requires the defendant to timely file an application for leave to appeal the trial court's decision with the Court of Appeals, and if necessary, the Supreme Court, before trial. *Crawford*, *supra* at 157–158.

The Michigan Supreme Court ruled that the time limit set for holding an accused's preliminary examination is "an unqualified statutory command that the examination be held within [that time limit]." *People v Weston*, 413 Mich 371, 376 (1982). Provided the issue is raised before a defendant's preliminary examination is held,* failure to conduct the preliminary examination within 14 days of the defendant's arraignment is cause for automatic reversal of a defendant's convictions or dismissal without prejudice of the charges against a defendant. *People v Crawford*, 429 Mich 151, 157 (1987). The time limit is operative without regard to whether the defendant is in custody for some or all of the time preceding the preliminary examination and without regard to whether the defendant is in custody for the same or a different charge for which the examination was scheduled. *People v Holguin*, 141 Mich App 268, 274 (1985) (where the defendant was in custody for a different offense, the defendant's conviction was reversed for failure to conduct a probable cause hearing within the 12-day period then required by the statute); *Crawford*, *supra* at 157 (even where the defendant was not incarcerated during the time between arraignment and the examination, the statutory time limit applied to preliminary examination).

> **Note:** A potential conflict exists between the provisions of MCR 6.104(E)(4), which indicates that the court *must* schedule the defendant's preliminary examination within 14 days of arraignment, and the final sentence of MCR 6.610(H), which discusses an unrepresented defendant's waiver of a preliminary examination. The two court rules appear at once to *mandate*, without apparent qualification, that the district court schedule a defendant's preliminary examination within 14 days of

arraignment, and to *permit* the district court, at arraignment, to accept an unrepresented defendant's waiver of his or her preliminary examination, provided the waiver is made freely, understandingly, and voluntarily. Should the potential conflict actually arise in practice, any error or uncertainty may be later addressed by the provisions of MCL 767.42(1), which states in part:

> "If any person waives his statutory right to a preliminary examination without having had the benefit of counsel at the time and place of the waiver, upon proper and timely application by the person or his counsel, before trial or plea of guilty, the court having jurisdiction of the cause, in its discretion, may remand the case to a magistrate for a preliminary examination."

4.14 Pretrial Release Determination

Except as otherwise provided by law, an individual charged with a criminal offense is entitled to bail. MCL 765.6(1); Const 1963, art 1, § 15; MCR 6.106(A).* A defendant arraigned in district court for a felony or misdemeanor not cognizable by the district court must be informed of his or her right to be released on bond. MCR 6.610(G)(2)(d). In addition, the court must determine what form of pretrial release is appropriate to the defendant and his or her circumstances. MCR 6.104(E)(5).

*See Criminal Procedure Monograph 5: *Preliminary Examinations—Revised Edition* (MJI, 2003), for detailed discussion of a defendant's pretrial release following a preliminary examination.

> "If it appears that a felony has been committed and that there is probable cause to believe that the accused is guilty thereof, and if the offense is bailable by the magistrate and the accused offers sufficient bail, it shall be taken and the prisoner discharged until trial. If sufficient bail is not offered or the offense is not bailable by the magistrate, the accused shall be committed to jail for trial. This section shall not prevent the magistrate from releasing the accused on his own recognizance where authorized by law." MCL 766.5.

Unless an order has already entered, the court must determine the conditions of a defendant's release at the defendant's first appearance before a court. MCR 6.106(A). If a defendant may not be held in custody pursuant to MCR 6.106(B) (which contains a list of circumstances in which a court may deny a defendant pretrial release and is discussed in Section 4.14(B), below), the court must order the release of the defendant on personal recognizance or an unsecured appearance bond, or subject to a conditional release, with or without money bail (ten percent, cash, or surety). MCR 6.106(A)(2)–(3). See SCAO Forms MC 240 (Order/Pretrial Release) and 241 (Bond).

> **Note:** When a defendant makes a preliminary appearance in a court outside the county of the offense or in a county different

from the court designated in the complaint or warrant, MCR 6.104(C) applies to the court's pretrial release determination. Whether to release the defendant pending appearance in the appropriate county requires the court to obtain a recognizance from the accused indicating that he or she will appear within the next 14 days before a court specified in the warrant or, in the case of a warrantless arrest, before a court in the judicial district where the offense occurred, or before some other court designated by that court. MCR 6.104(C). After receiving the accused's recognizance, the court must certify the recognizance and deliver it to the appropriate court "without delay." *Id*. If the accused was not released, he or she must be promptly transported to the judicial district of the offense. *Id.*

A. Pretrial Release Considerations

In determining which release to use and what terms and conditions to impose on a defendant's release, a court must consider any relevant information, including:

"(a) defendant's prior criminal record, including juvenile offenses;

"(b) defendant's record of appearance or nonappearance at court proceedings or flight to avoid prosecution;

"(c) defendant's history of substance abuse or addiction;

"(d) defendant's mental condition, including character and reputation for dangerousness;

"(e) the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;

"(f) defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;

"(g) the availability of responsible members of the community who would vouch for or monitor the defendant;

"(h) facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence, and

"(i) any other facts bearing on the risk of nonappearance or danger to the public." MCR 6.106(F)(2)(a)–(i).

B. Denying Pretrial Release

A defendant may be denied pretrial release under very specific circumstances. MCR 6.106(B) provides in part:

"(1) The court may deny pretrial release to

"(a) a defendant charged with

"(*i*) murder or treason, or

"(*ii*) committing a violent felony and

"[A] at the time of the commission of the violent felony, the defendant was on probation, parole, or released pending trial for another violent felony, or

"[B] during the 15 years preceding the commission of the violent felony, the defendant had been convicted of 2 or more violent felonies under the laws of this state or substantially similar laws of the United States or another state arising out of separate incidents.

"if the court finds that proof of the defendant's guilt is evident or the presumption great;

"(b) a defendant charged with criminal sexual conduct in the first degree, armed robbery, or kidnapping with the intent to extort money or other valuable thing thereby, if the court finds that proof of the defendant's guilt is evident or the presumption great, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person.

"(2) A 'violent felony' within the meaning of subrule (B)(1) is a felony, an element of which involves a violent act or threat of a violent act against any other person." MCR 6.106(B)(1)–(2).

C. Granting Pretrial Release

If the court is satisfied that a defendant's release on personal recognizance or unsecured appearance bond will reasonably ensure the defendant's appearance as required and will not present a danger to the public, a defendant's release is subject only to the defendant's agreement to appear as required, to remain in the state unless granted permission to leave, and to avoid committing any crimes while released. MCR 6.106(C).

If, however, a court determines that a defendant's pretrial release subject to the requirements of MCR 6.106(C) is not sufficient to reasonably ensure the defendant's appearance as required or to reasonably ensure the public's safety, the court may order the defendant's pretrial release subject to the

*See Section 4.15, below.

requirements contained in MCR 6.106(C) *and* any combination of conditions contained in MCR 6.106(D)(2).* MCR 6.106(D)(1)–(2).

D. Record Requirements

Court rule record requirement. If a court decides to release the defendant with money bail and one or more of the conditions contained in subrule (D)(2), the court must articulate for the record its reasoning for the decision. MCR 6.106(F)(2). It is not necessary for the court to make a finding on each factor listed in subrule (D)(2). MCR 6.106(F)(2).

Statutory record requirement. In contrast to the court rule (which lists nine factors to be considered but contains no mandate to record findings on all nine factors), statutory law expressly mandates that in setting a bail amount, the court consider *and make a finding on the record* with regard to each of the four factors listed in the statute. MCL 765.6(1) provides:

> "Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive and shall be uniform whether the bail bond is executed by the person for whom bail has been set or by a surety. The court in fixing the amount of bail shall consider and make findings on the record as to each of the following:
>
> > "(a) The seriousness of the offense charged.
> >
> > "(b) The protection of the public.
> >
> > "(c) The previous criminal record and the dangerousness of the person accused.
> >
> > "(d) The probability or improbability of the person accused appearing at the trial of the cause."

Note: Even though the court rule does not mandate that the court make and record its findings on each of the factors listed in MCR 6.106(D)(2), following the mandate found in the statute may minimize potential appellate problems.

Review of the pretrial release decision. A party may seek review of a court's pretrial release decision by filing a motion (no fee required) in the court having appellate jurisdiction over the court from which the pretrial release decision issued. MCR 6.106(H)(1). Absent its finding an abuse of discretion, the reviewing court may not stay, vacate, modify, or reverse the lower court's pretrial release decision. *Id*.

4.15 Conditional Release

If the court determines that the terms of pretrial release outlined in MCR 6.106(C) are insufficient to guarantee the defendant's appearance as required or do not reasonably ensure the public's safety, the court may order the defendant's release subject to one or more conditions. MCR 6.106(D)(2) sets forth a nonexhaustive list of conditions for a defendant's pretrial release. In addition to the conditions governing a defendant's release on recognizance or unsecured appearance bond (that the defendant will appear as required, will not leave the state, and will not commit any crime), the trial court may make a defendant's release

> "(2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to
>
> > "(a) make reports to a court agency as are specified by the court or the agency;
> >
> > "(b) not use alcohol or illicitly use any controlled substance;
> >
> > "(c) participate in a substance abuse testing or monitoring program;
> >
> > "(d) participate in a specified treatment program for any physical or mental condition, including substance abuse;
> >
> > "(e) comply with restrictions on personal associations, place of residence, place of employment, or travel;
> >
> > "(f) surrender driver's license or passport;
> >
> > "(g) comply with a specified curfew;
> >
> > "(h) continue to seek employment;
> >
> > "(i) continue or begin an educational program;
> >
> > "(j) remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court;
> >
> > "(k) not possess a firearm or other dangerous weapon;
> >
> > "(l) not enter specified premises or areas and not assault, beat, molest or wound a named person or persons;

> "(m) satisfy any injunctive order made a condition of release; or
>
> "(n) comply with any other condition, including the requirement of money bail as described in subrule (E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public." MCR 6.106(D)(2)(a)–(n).

4.16 Release with Money Bail

The court may decide that the imposition of one or more of the conditions listed above is insufficient to assure the defendant's appearance or to protect the public's safety. In such cases, with or without any of the conditions included in subrule (D), the court may require money bail. If money bail is required, the court must state on the record the reasons it decided bail was necessary to guarantee the defendant's appearance or to preserve the public's safety. MCR 6.106(E).

When the court requires a defendant to post bond, the defendant has the option of posting a bond to be executed by a court-approved surety or by an unlicensed surety (including the defendant himself or herself), as long as the bond is secured in a manner approved by the court. MCR 6.106(E)(1)–(2) permits the court to require the defendant to:

> "(a) post a bond that, at the defendant's option, is executed
>
> > "(*i*) by a surety approved by the court, or
> >
> > "(*ii*) by the defendant, or by another who is not a licensed surety, and secured by
> >
> > > "[A] a cash deposit, or its equivalent, for the full bond amount, or
> > >
> > > "[B] a cash deposit of 10 percent of the bond amount, or, with the court's consent,
> > >
> > > "[C] designated real property; or
>
> "(b) post a bond that, at the defendant's option, is executed
>
> > "(*i*) by a surety approved by the court, or
> >
> > "(*ii*) by the defendant, or by another who is not a licensed surety, and secured by

> "[A] a cash deposit, or its equivalent, for the full bond amount, or, with the court's consent,
>
> "[B] designated real property."

If the court consents to the use of real property to secure a defendant's bond, the court may require the defendant to produce satisfactory proof of the property's value and the defendant's interest in it. MCR 6.106(E)(2).

Terminating a release order. When a defendant satisfies the conditions of his or her release and is discharged from all obligations in the case, the court must vacate the defendant's release order and discharge any person who has posted bond. MCR 6.106(I)(1). If cash or its equivalent was posted for the full amount of the defendant's bond, it must be returned. *Id*. If ten percent of the bond amount was deposited, the court must return 90 percent of the deposited money and retain ten percent. *Id*.

4.17 Juvenile Arraignments in "Automatic Waiver" Cases

Where a "specified juvenile violation" (discussed below) is alleged, the "automatic waiver" procedure allows a prosecuting attorney to vest jurisdiction in the "Criminal Division" of the circuit court by filing a complaint and warrant in district court rather than filing a petition in the Family Division of Circuit Court. See MCL 600.606(1), MCL 764.1f(1), and MCL 712A.2(a)(1).*

*See Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings—Revised Edition* (MJI, 2003), for more information.

Subchapter 6.900 of the Michigan Court Rules is dedicated to "automatic waiver" cases. MCR 6.901(B) defines the scope of these rules:

> "The rules apply to criminal proceedings in the district court and the circuit court concerning a juvenile against whom the prosecuting attorney has authorized the filing of a criminal complaint charging a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court. The rules do not apply to a person charged solely with an offense in which the family division has waived jurisdiction pursuant to MCL 712A.4 ['traditional waiver' procedure]."

For purposes of the applicable court rules, "juvenile" means an individual at least 14 years of age who allegedly committed a "specified juvenile violation" on or after the individual's 14th birthday and before the individual's 17th birthday. MCR 6.903(E).

In addition to its inclusion in MCR 6.903(H), the list of "specified juvenile violations" is found in MCL 712A.2(a)(1), MCL 600.606(2), and MCL 764.1f(2). In its entirety, the list includes:

- burning a dwelling house, MCL 750.72;
- assault with intent to murder, MCL 750.83;
- assault with intent to maim, MCL 750.86;
- assault with intent to rob while armed, MCL 750.89;
- attempted murder, MCL 750.91;
- first-degree murder, MCL 750.316;
- second-degree murder, MCL 750.317;
- kidnapping, MCL 750.349;
- first-degree criminal sexual conduct, MCL 750.520b;
- armed robbery, MCL 750.529;
- carjacking, MCL 750.529a;
- bank, safe, or vault robbery, MCL 750.531;
- assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon;
- first-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon;
- escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency or a county juvenile agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency or a county juvenile agency, MCL 750.186a;
- manufacture, sale, or delivery of 1000 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7401(2)(a)(i), or possession of 1000 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7403(2)(a)(i);
- any attempt, MCL 750.92;
- any solicitation, MCL 750.157b;
- any conspiracy, MCL 750.157a, to commit any of the above crimes;
- lesser included offenses and other offenses arising out of the same transaction. See MCR 6.903(H)(18) and (19).

MCL 764.27 states that "[e]xcept as provided in [MCL 600.606]," a person under 17 years of age arrested with or without a warrant must be taken immediately before the Family Division of Circuit Court. The "automatic waiver" provision of MCL 600.606 operates as an exception to MCL 764.27's

mandate that a juvenile first be taken before a Family Division court after his or her arrest. *People v Brooks*, 184 Mich App 793, 797–798 (1990). In *Brooks*, the trial court suppressed a juvenile defendant's statement to police because the juvenile was not "taken immediately before the family division of the circuit court" as required by MCL 764.27. In reversing the trial court's decision, the Court of Appeals explained:

> "[T]he Legislature intended that those juveniles charged as adult offenders pursuant to §606 fall outside of the juvenile court's jurisdiction. Because §606 divests the juvenile court of jurisdiction and gives the circuit court original jurisdiction in the matter, the mandatory provisions set forth in [MCL 764.]27 do not apply to those juveniles charged as adult offenders." *Brooks*, *supra* at 798.

4.18 Procedure Required for Juvenile Arraignments in District Court

MCR 6.907 specifies the procedure for conducting juvenile arraignments in district court.* Specific time limits apply to juvenile arraignments when the prosecutor has decided to proceed against the juvenile by complaint and warrant for the juvenile's alleged commission of a specified juvenile violation. MCR 6.907(A)(1)–(2) state:

*See Section 4.22 for a checklist of the steps required in juvenile arraignments.

> "When the prosecuting attorney authorizes the filing of a complaint and warrant charging a juvenile with a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court, the juvenile in custody must be taken to the magistrate for arraignment on the charge. The prosecuting attorney must make a good-faith effort to notify the parent of the juvenile of the arraignment. The juvenile must be released if arraignment has not commenced:
>
> > "(1) within 24 hours of the arrest of the juvenile; or
> >
> > "(2) within 24 hours after the prosecuting attorney authorized the complaint and warrant during special adjournment pursuant to MCR 3.935(A)(3),* provided the juvenile is being detained in a juvenile facility."

Note: MCR 3.935(A)(3), the special adjournment provision referred to above, requires the Family Division of Circuit Court, upon the prosecuting attorney's request, to adjourn a preliminary hearing in a delinquency proceeding for up to five days to allow the prosecutor to decide whether to proceed under the "automatic waiver" statutes.*

*See Miller, *Juvenile Justice Benchbook—Revised Edition* (MJI, 2003), Section 3.6, for more information.

At a juvenile's arraignment on the complaint and warrant charging him or her with a "specified juvenile violation," the court must first determine whether the juvenile is accompanied by a parent, guardian, or adult relative. MCR 6.907(C)(1). The court may conduct a juvenile's arraignment in the absence of the juvenile's parent, guardian, or adult relative, as long as the court has appointed an attorney to appear with the juvenile at arraignment or an attorney retained by the juvenile appears with him or her at arraignment. *Id*.

A juvenile's preliminary examination must be scheduled within 14 days of the juvenile's arraignment. MCR 6.907(C)(2). This 14-day period may be reduced by as many as three days for time given and used by the prosecutor under the special adjournment provision of MCR 3.935(A)(3).

A juvenile may waive his or her right to a preliminary examination if the juvenile is represented by an attorney and makes a written waiver of the right in open court. MCR 6.911(A). The magistrate must determine on the record that the juvenile's waiver was freely, understandingly, and voluntarily given. *Id*.

4.19 Juvenile Pretrial Release

*See Chapter 5, *Juvenile Justice Benchbook—Revised Edition* (MJI, 2003), for detailed information.

MCR 6.909 governs the release or detention of juveniles pending trial and other court proceedings.*

Bail. Except when bail may be denied, the court must advise a juvenile defendant of the right to bail as that right is provided for adults accused of bailable criminal offenses. MCR 6.909(A)(1). The court may order a juvenile released to a parent or guardian and impose any lawful conditions on the juvenile's release, including the condition that bail be posted. *Id*.

Detention without bail. MCR 6.909(A)(2) specifies the circumstances in which a juvenile may be denied bail:

> "(2) If the proof is evident or if the presumption is great that the juvenile committed the offense, the magistrate or the court may deny bail:
>
> > "(a) to a juvenile charged with first-degree murder, second-degree murder, or
> >
> > "(b) to a juvenile charged with first-degree criminal sexual conduct, or armed robbery,
> >
> > > "(*i*) who is likely to flee, or
> > >
> > > "(*ii*) who clearly presents a danger to others." MCR 6.909(A)(2)(a)–(b).

Juvenile's place of confinement during detention without bail. A juvenile charged with a crime and not released while awaiting trial or sentencing must be placed in a juvenile facility. MCR 6.909(B)(1). On motion of the prosecuting attorney or the superintendent of the juvenile facility where a juvenile is detained, the court may order that the juvenile be lodged in a facility used to incarcerate adult prisoners if the juvenile's conduct is a menace to other juveniles or if "the juvenile may not otherwise be safely detained in a juvenile facility." MCR 6.909(B)(2)(a)–(b).

A juvenile shall not be placed in an institution operated by the family division of the circuit court unless the family division consents to the placement or the circuit court orders the placement. MCR 6.909(B)(3). A juvenile in custody or otherwise detained must be maintained separately from adult prisoners or defendants pursuant to MCL 764.27a. MCR 6.909(B)(4). See Section 4.22 for a checklist of required steps in juvenile arraignments and pretrial release.

4.20 A Crime Victim's Rights Following Arraignment

Article 1 of the Crime Victim's Rights Act (CVRA), MCL 780.751 *et seq*., assigns certain rights and responsibilities to victims of felonies.* Although most provisions of the CVRA deal with a law enforcement agency's obligations, the court may find it helpful to be cognizant of the following sections of the CVRA as early as the arraignment.

*See Miller, *Crime Victim Rights Manual* (MJI, 2001), for a detailed and comprehensive discussion of the Crime Victim's Rights Act.

Identifying information about a crime victim is protected. MCL 780.758(2) provides that a victim's home and work addresses and telephone numbers must not be in the court file or "ordinary" court documents unless they are contained in a trial transcript or are used to identify the place of a crime. A victim's addresses or telephone numbers are exempt from disclosure under the freedom of information act. MCL 780.758(3)(a).

Notice required when the defendant is available for pretrial release. Within 24 hours of a felony defendant's arraignment, the investigating law enforcement agency must notify the victim "of the availability of pretrial release for the defendant." MCL 780.755(1). The notice must include the sheriff's telephone number and must inform the crime victim that he or she may contact the sheriff to find out whether the defendant was released from police custody. *Id*. If a victim has requested notification of a defendant's arrest or release under MCL 780.753, the investigating law enforcement agency must promptly notify the victim of these events. MCL 780.755(1).

Part B—Checklists

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